

SEP 8 1982

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The information submitted discloses that you were incorporated under the nonprofit corporation laws of the State of [REDACTED] on [REDACTED].

Your Articles of Incorporation, states, in part, that your purposes are (a) to organize, operate and raise money for the operation of amateur athletic teams and (b) to engage in all such activities permitted to be carried on by an organization exempt under section 501(c)(7). On [REDACTED], you amended your purposes to [REDACTED], in part, that your corporation is organized exclusively (a) to foster national or international amateur sports competition and (b) to engage in all such activities that are permitted to be carried on by an organization exempt under section 501(c)(3).

According to the description of your activities in your application, the main purpose of [REDACTED] is to provide funding through donations for amateur athletics competition. Initially, [REDACTED] has been responsible for the formation of a baseball team and fund raising for the one baseball team in the [REDACTED] area. It was deemed necessary to create one team at the upper level of competition to establish an interest in the entire sport.

The [REDACTED] team is mainly for adults above the age of 18 who now play baseball at college and are on their summer break. [REDACTED] contacts college coaches throughout the state informing them of the existence of the [REDACTED] team. In June of each year, it holds tryouts for those interested in playing. Last year the team had [REDACTED] players at the beginning of the season. Approximately [REDACTED] to [REDACTED] players are anticipated each year that the team participates in league play.

CODE	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
SUR. NAME	[REDACTED]						
DATE	9/7/82						

[REDACTED]

The League is affiliated with the [REDACTED], which includes three other leagues--(1) [REDACTED] (teams from the [REDACTED] area); (2) [REDACTED] (teams from [REDACTED]); and (3) [REDACTED] (teams from [REDACTED]).

The names of the other [REDACTED] towns are not known because the uniforms bear just the names of the [REDACTED] businesses which are sponsoring the teams.

[REDACTED] has donated \$[REDACTED] to [REDACTED]'s baseball team. Eventually, [REDACTED] would like to acquire donations to support amateur baseball programs for all ages above 8 years old, including other high school baseball teams in the area, the little league, pony league, and the [REDACTED] League in the area.

The Association's founders, who are also its officers, are [REDACTED]. The three officers are also the directors of [REDACTED], a for-profit corporation, which provides baseball instruction to individuals or groups of individuals for a fee. The [REDACTED] team and its players do not receive instruction from [REDACTED], but they are coached by [REDACTED] and a [REDACTED] from [REDACTED], who serve as unpaid coaches at present.

[REDACTED] has provided, however, five baseball bats, carrying bags for the bats, and baseballs, the total fair market value being \$[REDACTED]. [REDACTED] furnishes uniforms (total cost of about \$[REDACTED]) that are expected to be returned at the end of the season. The players pay a \$[REDACTED] deposit to cover the cost of the uniforms (with a \$[REDACTED] value) and are refunded the deposit at the time they return their uniforms. The players provide their own gloves, shoes, and any other miscellaneous equipment that they wish to have.

[REDACTED] does not plan to sell uniforms or any other sports equipment. At present, it is solely a service company. However, it plans to build a batting cage in the [REDACTED] area and possibly other areas in the future for profit. The individuals using the cage pay for the right to use a bat and a pitching machine. The company has also talked about the possibility of writing a book on baseball instruction, but that is just an idea at present. The major donor to [REDACTED] has been [REDACTED], commercial architects, with whom the building of a batting cage was discussed. However, it has been determined that [REDACTED] would not be involved if a batting cage is to be built.

According to the Bylaws, the business and property of the Association shall be managed and controlled by a Board of Directors of three members. The Bylaws also provide that the members of the [REDACTED] shall consist of the three founders named in the Articles of Incorporation. The named individuals, who are the officers of the association, may in their discretion elect any other person(s) to membership. At any meeting of the membership, the presence of two persons in person or by proxy shall constitute a quorum. Under Article 4 of the Articles of Incorporation, any contract or other transaction between [REDACTED] and one or more of its directors, or between [REDACTED] and any corporation, firm, association, or other entity with which one of the [REDACTED] officers is affiliated shall be valid for all purposes, notwithstanding the presence or participation in the voting by such directors.

Section 501(c) of the Internal Revenue Code of 1954 describes certain organizations exempt from income tax under section 501(a) and reads in part:

- (3) Corporation, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If any organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Revenue Ruling 65-2, 1965-1 C.B. 229 states that an organization which is organized and operated for the purpose of teaching a particular sport to children by holding clinics conducted by qualified instructors in schools, playgrounds, and parks, and by providing free instruction, equipment, and facilities, qualifies for exemption under section 501(c)(3).

By instructing children through a personally taught course of instruction relating to a particular sport, the organization is serving a recognized public purpose of combatting juvenile delinquency and thereby lessening the burdens of government, an activity which is recognized as being charitable.

Revenue Ruling 69-384, 1959-2 C.B. 122 states that an organization created to maintain an amateur baseball association made up of baseball teams with amateur players of college age is exempt under section 501(c)(4) of the Code. The organization establishes summer baseball schedules and sets standards, policies, and ethics that govern the member teams in a community. By helping to develop good sportsmanship, high character, and the physical and mental well-being of young adults through the operation of an amateur baseball league, it was held that the organization is promoting the common good and general welfare of the people of the community.

In Revenue Ruling 77-365, 1977-2 C.B. 192, an otherwise qualifying nonprofit organization that conducts clinics, workshops, lessons, and seminars at municipal parks and recreational areas to instruct and educate individuals of all ages and skill in a particular sport was held to be operated exclusively for educational purposes and qualified for exemption under section 501(c)(3). The organization does not establish rules, set standards for equipment or sponsor league competition for the sport in which it provides instruction.

Section 1.501(c)(3)-1(d)(3) of the Income Tax Regulations states that an organization provides athletic facilities or equipment if:

- (i) the organization permits the use of athletic facilities or equipment that it owns;
- (ii) the organization pays for or otherwise assumes the cost of the use of athletic facilities or equipment owned by any other person; or
- (iii) the organization reimburses amateur athletes for the cost of athletic facilities or equipment.

From the information you have furnished us, the players on your team are selected mainly from adults over the age of 18 who are on summer break from college. Therefore, your activity would not be considered charitable by preventing juvenile delinquency, as was the rationale in Revenue Ruling 65-2. Furthermore, your organization, unlike the organization described in Revenue Ruling 77-365, is not organized exclusively to instruct and educate individuals of all ages and skill levels in baseball. The [redacted] team consists of players who are already skilled.

[REDACTED]

Besides directing your recruitment of players to only college age adults, you take only a limited number of players, selected after tryouts. You also set rules or standards for equipment and participate in league competition. Sponsoring or participating in league competition is one of your main purposes. Therefore, you are not organized exclusively for educational purposes.

Your Articles of Incorporation, as amended, changed the purpose of the organization from organizing, operating and raising money for an amateur athletic team that is a social or recreational club under section 501(c)(7) to one that is organized exclusively to foster national or international amateur sports competition under section 501(c)(3). However, you state also that you eventually hope to support baseball teams for all ages in [REDACTED] County, including high school teams, the little league, pony league, colt league, and [REDACTED] league. Support of these various amateur teams with a wide variance of skill would not be in accordance with your amended exempt purpose of being organized exclusively to foster national and international amateur sports competition.

In the 1976 amendment to the Internal Revenue Code section 501(c)(3), Congress added "to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)." In the discussion of the amendment in the Senate Congressional Record dated August 5, 1979, it emphasizes that:

It (the amendment) is not intended to make social clubs, or organizations of casual athletes, into tax-exempt charities. Only an organization whose primary purpose is the support and development of amateur athletes for participation in international competition in Olympic or Pan American sports will qualify under this amendment. Organizations whose primary purposes are the recreation of their members or whose facilities are used primarily by casual athletes will not qualify.

Income Tax Regulations section 1.503(c)(3)-1(d)(7) states that for purposes of fostering national or international amateur sports competition, the term "amateur athletes" refers only to athletes who participate or reasonably can be expected to participate, in national championships or international competition in an amateur sport.

Even if your organization should not expand its support to include all ages and a variety of teams, and continues to support the one adult team only, there is no evidence that the skill and intent of your one team that is formed each summer are such that it can be expected to participate in national competition for Olympic or Pan American sports as explained in the regulations. You state that in [REDACTED], your team participated in a tournament held in [REDACTED] with teams from the [REDACTED] League ([REDACTED]), the [REDACTED] League, and the champion of a [REDACTED] League.

[REDACTED]

The mere fact that a team from [REDACTED] had participated in the same tournament and gives the tournament "an international flavor," as you state, does not place your team in the category contemplated for exemption under section 501(c)(3). You state that the fact that a team from [REDACTED], which is situated just east of the [REDACTED] state border, is included in the [REDACTED] League makes that league a national league. However, just the fact that a team from an adjacent state is a member of a league does not classify the tournament as being national competition for national championship for Olympic Games or Pan American Games or even a competition to select a team to participate in a national championship competition.

Therefore, judging from the types of players you support, or intend to support, you do not meet the requirements of an organization that is organized and operated exclusively for fostering national championship or international competition contemplated by the statute.

In Revenue Ruling 70-4, an organization which publicized a sport, conducted tournaments and exhibitions, and gave occasional instructive clinics but had no regular program of teaching the sport to the public was denied recognition as an IRC 501(c)(3) educational organization and was characterized as a social welfare organization under IRC 501(c)(4). The Internal Revenue Service's position is that organizations which merely promote competitive sports are not educational organizations within the meaning of section 501(c)(3).

Therefore, we have considered whether your organization might qualify for exemption under section 501(c)(4). However, from the information you have furnished us, it appears that thus far, participation consists of just a limited number of college students who have been selected to play on the team after tryouts. The general public may not participate or benefit from your operations. Furthermore, you state that you are not interested in exemption under section 501(c)(4) because you feel that your situation is similar to the Hutchinson Baseball Enterprises case, which involved an unpaid semi-professional team, but which court case you acknowledge was not acquiesced to as being exempt under section 501(c)(3) by the IRS Commissioner. The Internal Revenue Service holds that the promotion of sports, in and of itself, is not a charitable purpose within the meaning of section 501(c)(3) in the absence of other educational or charitable goals (prevention of juvenile delinquency) furthered by the activity.

Furthermore, you state that [REDACTED] was formed to teach baseball for a fee and that it intends to build batting cages for profit. You state that the [REDACTED] was formed as a separate entity by the officers of [REDACTED] to stimulate and build interest in baseball in the country. Thus, it would appear that the directors of [REDACTED] are trying to promote and create interest in baseball, so that it would be profitable for [REDACTED] to build batting cages for practicing. By promoting baseball, the directors are serving their private interests as regards their future profits.

[REDACTED]

By serving as the three directors for the [REDACTED] and [REDACTED], which may enter into any contract with the for-profit business, there is a conflict of interest and serving of private interest that cannot be overlooked whether the exemption is being considered under 501(c)(3) or 501(c)(4).

Accordingly, for the various reasons given above, you do not qualify for exemption under section 501(c)(3) nor 501(c)(4). You are required to file Federal income tax returns on Form 1120 for each year you have been in existence. We are not ruling on your qualification for exemption under any other related paragraph if IRC 501(c).

If you accept our findings, you do not need to take further action.

If you do not accept our findings, we recommend that you request a conference with the Office of Regional Director of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at our Regional office or, if you request, at any mutually convenient District office.

If we do not hear from you within 30 days from the date of this letter, this ruling will become final. If you have any questions, please contact the person whose name and telephone number are shown above.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

A copy of this letter is being sent to appropriate State officials in accordance with Internal Revenue Code section 6104(c).

Sincerely yours,

[REDACTED]
District Director

Enclosure
Publication 892